

# EXHIBIT F

Boca Raton, 10/27/2023

## Testimony Report for Copyright Infringement.

**By Barbara Salani**

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Ph.D. Candidate in Comparative Studies in Musicology  
and Italian Culture, Literature and Language.

This report sets forth my findings regarding a legal dispute concerning three songs:

- 1) *Wiggle and Giggle All Night*, (also referred as "WG") by singer Cory Daye, written in the late 1970s by L. Russell Brown and Sandy Linzer. YouTube video link:  
[https://www.youtube.com/watch?v=EsEXuWK7PZE&ab\\_channel=TopPop](https://www.youtube.com/watch?v=EsEXuWK7PZE&ab_channel=TopPop)
- 2) *Don Diablo*, (also referred as "DD") a Spanish hit song from the 1980s sung by Miguel Bosé which became widely popular worldwide. However, the writer of the lyrics in Spanish, Miguel Bosé, claimed the song as his original work several years ago. Linzer and Brown, the composers of *Wiggle and Giggle All Night*, filed a lawsuit for copyright infringement which was ultimately settled. As a result of the settlement, Linzer and Brown were granted 100% worldwide copyright ownership of *Don Diablo*. Therefore, Linzer and Brown are the legal owners of both *Wiggle and Giggle All Night* and *Don Diablo*. YouTube link for *Don Diablo*:  
<https://youtu.be/v3N444t7m0A>
- 3) Lastly, Linzer and Brown are now suing for copyright infringement on a current hit song by Dua Lipa known as *Levitating* (also referred as "LEV"). YouTube link:  
[https://www.youtube.com/watch?v=TUVcZfQe-Kw&ab\\_channel=DuaLipa](https://www.youtube.com/watch?v=TUVcZfQe-Kw&ab_channel=DuaLipa)

The objective of this report is to investigate and document instances of copyright infringement by *Levitating*. This analysis demonstrates that there are significant musical similarities between *Wiggle and Giggle All Night*, *Don Diablo* and *Levitating* that constitute copyright infringement.

Each track included in this Testimony Report was replicated from its initial recording and converted into musical notation for comparative analysis. I used a standard technique in musicological studies that aligns the musical compositions to the same key signature to facilitate a clearer comparison. DD was originally in the key of Bb Major, while WG was in the key of Eb Major and LEV in the key of B minor. To align the three songs, DD was transposed from BbM to DM. WG was transposed from Eb Major to D Major, and LEV was kept in its original key of B minor. This way all songs have the

same key signature, for direct comparison purposes, being B minor, the relative of DM (2#). Note that transposing a song to a different key doesn't modify its melodic structure, its mode, its intervals or the rhythm, but merely alters its starting pitch.

Additionally, this testimony report aims to highlight the uniqueness of the musical motif of the song *Wiggle and Giggle All Night*. Figure 1 shows its thematic sentence which reflects its own distinctive melodic complexity that satisfies any originality requirement showcasing the composer's creativity. In the context of the initial musical motive, we encounter two 16<sup>th</sup> notes anacrusis (upbeat on bar #9) in the dominant note (A) which proceeds upwards a Major 6<sup>th</sup> to F# (the Mediant or 3<sup>rd</sup> degree of the DM scale, bar #10). From F# starts a four repeated 16<sup>th</sup> notes pattern descending every beat, with slight variations and syncopation that make this motive original and compelling. Combining its captivating distinct melody, and rhythmic pattern with the symbiotic relationship between syllable and note in its fast, dynamic tempo, WG's opening sentence is unique, protectable for copyright law for its original blending of musical features that contributed to its global success back in the 1970s.

**Figure 1: WG initial motive and musical sentence.**



Let's continue by juxtaposing DD on the upper staff & WG on the lower staff (Figure 2) trying to analyze their common traits:

**Figure 2: Similarities in DD & WG**

On Figure 2 we can observe that both songs share the same melodic motive, harmonic and rhythmic pattern, moving in the same direction and with the same features. Outside of basic lyrical differences that force rhythmic changes and minor variations, the feeling, the drive and the melodic phrases are virtually identical.

Let's analyze the melodies and rhythms of the songs using two separate colors: DD's melody is depicted in black with upward-facing stems, whereas WG's melody is shown in red with downward-facing stems (Figure 2A). Besides the matching melodic and rhythmic line, it is evident that the harmonic progression is exactly the same: from DM (tonic bar #10) to AM (dominant, bar #11), going back to DM (tonic, in bar # 13) (Figure 2A).

Figure 2A, the overlapping similarities between DD and WG are evident.



Consequently, having established the identical nature of DD and WG, the authors Linzer and Brown were awarded 100% worldwide copyright ownership of the song "Don Diablo" evidencing that the songs DD and WG are identical.

Let's now focus the analysis on the songs DD and LEV. We will showcase that there are multiple musical elements exhibiting significant resemblance between these two songs. Further, the notes and rhythmic patterns under scrutiny don't seem to be coincidental. As illustrated in Figure 3, DD is represented on the upper staff in black while LEV is on the lower staff in red. Both songs display an identical melodic line, interval relationship, and rhythmic pattern, characterized by four repeated 16th notes for every beat, moving in a descending motion. The excerpt showcasing the identical features is highlighted within a red rectangle.

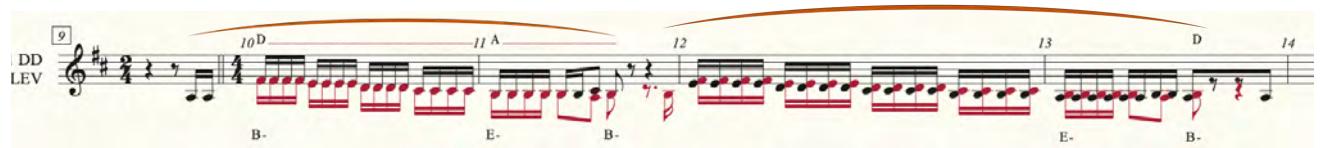
Figure 3: Comparison between DD and LEV:  
the matching melodic motives in common



This motive, culminates on the third beat of the 11th measure after a subtle melodic variation. Following this, moments of silence (rests) mark the end of the

song's opening theme, that is repeated in bars 12 and 13 with rhythmically identical motives creating two identical musical sentence as shown by the red slurs in Figure 3A which show the remarkable similarities between the two songs. The subsequent example highlights other overlapping rhythmic patterns between DD and LEV. DD is represented in black, while LEV is shown in red (Figure 3A).

**Figure 3A: Similar musical sentences and rhythmic patterns between DD and LEV**



In Figure 3A, focusing on bars from #10 to #13, both songs use the same rhythmic pattern with the exception of the anacrusis: two 16<sup>th</sup> notes in bar 9, the last 16<sup>th</sup> note in bar 11, and the last 8<sup>th</sup> note in bar 13. They are different for the lyrical context. There are a total of 25 rhythmic values in bars 10 and 11. 22 of the 25 are exactly the same. In bars 12 and 13 there are a total of 26 rhythmic values of which 21 are exactly the same. Therefore, from bar #10 to #13 we encounter a total of 43 identical rhythmic values out of 51.

Therefore, summarizing, we can state that in this initial musical sentence there are in common 20 consecutive notes, (in the red triangle, Figure 3) with same pitches, same intervals, same rhythm, same time signature (4/4), plus 43 identical rhythmic values, displayed in the same fast background beat, two exact musical phrases showcased by the slurs (Figure 3A), as well as a recognizable similarity in overall sound.

Taking a close look at LEV, we can find this musical identical motive not only at the beginning of the song, in bars #10 and #11, but it is also repeated in bars #12 and #13 (Figure 3), and once more, for the third time as shown in bars #16 and #17 in figure 4. In DD the same exact musical motive is repeated three times as well throughout the song, giving this melodic motive the meaning of a "recurring theme". Therefore, both songs repeat the exact musical motive three times. This feature is not coincidental!

**Figure 4: Third repetition of the same musical motive in LEV.**



Another shared characteristic of these songs is the placement of this identical motive at the song's outset. It is the initial musical phrase that accompanies the beginning of the lyrics for both artists.

In musical terms, the 'incipit' can be thought of as the introductory melodic motive that provides a recognizable identity to the piece. This is analogous to the 'incipit' in literature, which refers to the opening words of a book or poem. For instance, the renowned line "To be, or not to be: that is the question," from Prince Hamlet's soliloquy in William Shakespeare's "Hamlet," Act 3, Scene 1, is instantly recognizable. Even a minor alteration, such as "To be, or not to be: this is the question," retains its Shakespearean essence.

In a similar vein, minor variations in the 11th bar, 2nd beat, and the 13th bar, 2nd beat of the LEV song don't significantly deviate from DD's signature opening melodic motive.

The intent here is to demonstrate the significance of the 'incipit' in a musical composition: it's that initial tune that resonates immediately with listeners. Both songs commence with an identical musical phrase, as highlighted in figure 3. The emphasis that the composers of both songs placed on this 'incipit', in both DD and LEV is noteworthy. Had this passage been situated in the middle of the song, its impact might have been different. However, its positioning at the very start of both pieces makes the copying substantially more likely and intentional.

To further illuminate the 'incipit's' prominence, let's delve into a musical example: Beethoven's 5th Symphony. It starts with a unique musical motive comprising four notes, which Beethoven then sequences in a descending 2<sup>nd</sup>. Owing to this distinct introductory motive, Beethoven's 5th is instantly recognizable, contributing to its reputation as one of the most iconic symphonies ever composed.

Figure 5: Orchestral score of Beethoven's 5<sup>th</sup> Symphony

FÜNFTE SYMPHONIE  
von  
L. van BEETHOVEN.

Beethovens Werke.

100

Serie I. Nr. 5.

Dem Fürsten von Lobkowitz und dem Grafen Rassouhoff-ky gewidmet.

Op. 67.

Allegro con brio,  $\frac{2}{4}$ -ton.

Flauti.

Oboi.

Clarinetts in B.

Fagotti.

Corni in Es.

Trombe in C.

Timpani in C. G.

Violino I.

Violino II.

Viola.

Violoncello.

Basso.

Original-Verleger: Breitkopf &amp; Härtel in Leipzig.

B. 5.

Stich und Druck von Breitkopf &amp; Härtel in Leipzig.

This analysis aims to emphasize that the initial musical motive, or 'incipit,' is the defining characteristic of a piece, embodying its unique identity.

Another shared feature in DD and LEV is a particular motion of the musical phrase in discussion. Performed at a relatively fast tempo, it showcases a rhythmic pattern that is articulated in nature, with each syllable of the lyric corresponding to a musical note. The lyrical content is not relevant here, not even the different languages, only the disposition of the corresponding declamatory syllabic approach and metric which are very relevant to demonstrate the similarities between the two songs.

Usually, if someone creates new lyrics for a musical theme of a song that already exists, it's seen as a parody. Parodies have some legal protections, but they are also subject to legal requirements and permissions if you intend to profit from them.

The correspondence of every syllable of the lyrics in both songs, DD and LEV is demonstrated in Figures 6A and 6B. This correspondence creates the identical feel.

Figure 6A

Don Diablo with Lyrics

9

11

13

22

Figure 6B

9 Levitating with Lyrics

If you wan-na run a - way with me I know a ga - la - xy and

11

I can take you for a ride I had a pre-mo-ni-tion that we fell in-to a rhy-thm where the

13

mu-sic don't stop for life.

In the past, on the case "My Sweet Lord/He's So Fine", the court found that George Harrison was liable for copyright infringement when **a melodic motive of three notes** and **a motive of five notes** from his song "My Sweet Lord" were found to be substantially similar to a three-note motive and a five-note motive in Chiffons' song "He's So Fine."

In our case, the common features between DD and LEV are substantially more evident: these elements fall under copyright protection, representing the composer's distinct intellectual creation.

1. Both songs feature their identical elements in the musical 'incipit'.
2. They contain 20 notes with matching pitches, identical intervals and rhythm.
3. That identical initial motive is repeated 3 times in both DD and LEV.
4. Over four bars, there are 45 notes with exact rhythmic values.
5. They share two precise musical phrases from bars 10 to 13.
6. Both use an articulated syllable-to-note approach.
7. They have very similar background beat and rhythm.
8. There's a noticeable resemblance in the overall feel and fast, articulated tempo.

However, in a counter-argument presented by Dua Lipa's lawyer, after reviewing Meloni's report, I dispute the comparison of *Don Diablo* and *Levitating* to *Staying Alive*, because the disposition of the pitches and the syncopation occurring inside and between bars, don't represent an actual identical situation as demonstrated in Figure 3 where a rhythmic pattern of 4 same-pitch repeated 16<sup>th</sup> notes in descending motion are used. Moreover, the musical motive and phrase in *Staying Alive* doesn't allow to produce a syllabic continuity and rhythmic correspondence of the text to every note due to the syncopation, like the one we clearly demonstrated as occurring in *Don Diablo* and *Levitating* in Figures 6A and 6B of this report.

Please find below the example submitted in the file "Meloni to Brown" (12/1/2021), on Exhibit 3 (pp. 26-27) relating to the song *Staying Alive*.

Meloni to Brown, Exhibit 3, *Staying Alive*, last 3 lines of P. 27

F-1

Wheth - er you're a broth - er or wheth - er you're a moth - er, you're stay -

- in', a - live,\_\_\_

stay - in', a - live,\_\_\_

Feel the cit - y break - in' and ev - 'ry - bod - y shak - in' and we're

I dispute also the similarities with the song *Se Dice De Mi* in the passage highlighted in red. As you can clearly notice, this passage of the song, is not located at the beginning, it occurs in the second page of the song. Moreover, in *Se Dice de Mi*, the musical phrase of repeated 16<sup>th</sup> notes, starts going up, as highlighted by the small

red diagram. The ascending and descending melodic line of *Se Dice De Mi* has an opposite, contrary motion compared to the only descending melodic line of DD and LEV, and it sounds completely different from the above-mentioned songs.

The following passage is from “Meloni to Brown” (12/1/2021),  
Exhibit 4 (pp. 31) relating to the song *Se Dice De Mi*.

Yo seque mu-chas que des-pre-cian, com-prar qui-ren, y suspi-ran y se mue-ren cuan-do pien-san en mi\_a-  
mor. Y más de u-na se de-ri-te si sus - pi-ro y se que-da si la mi-ro re-so-plan-do co-mo\_un Fondo. Si fe-o

The musical score consists of four staves of piano music. A red box highlights a specific melodic line in the upper staff, which consists of an ascending sequence of eighth notes. The lyrics are written below the notes. The music is in common time, with a key signature of one flat. The vocal line is supported by harmonic chords in the bass and middle staves.

I also dispute the comparisons to the Carl Czerny (1791 – 1857) technical exercise for the left hand since it belongs to public domain. Although there is a similar rhythmic pattern, it is located in the middle of a virtuosity passage with fast repeated 16<sup>th</sup> notes, composed with the purpose to develop fast articulation for the fingers of the left hand.

This passage is from “Meloni to Brown” (12/1/2021),  
Exhibit 5 (pp. 33-36) relating to the Czerny Etudes for the Left-Hand Op. 718  
(P. 36).

cresc.

The musical score shows two staves of piano music. The top staff features a rhythmic pattern of sixteenth-note pairs with fingerings (1-2, 3-4, 5-6, 7-8) and a dynamic marking 'cresc.'. The bottom staff shows a similar pattern with a dynamic marking 'f'. The music is in common time, with a key signature of one flat. The pattern is repeated across the staves.

Many popular songs have borrowed segments from public domain melodies of classical music, allowing artists to avoid copyright complications since these classical pieces are not protected by contemporary copyright laws. It's worth noting that adaptations of public domain pieces can still be protected by copyright laws.

However, what sets Sandy Linzer and Brown's melody apart from these examples is that their song is not only catchy and compelling, but it also sold millions of records worldwide. Therefore, Linzer and Brown's melody is distinct enough from the songs cited by Meloni in his Exhibits 3, 4 and 5 and it stands as an original unique song that reaped a lot of success in the 1970's.

In conclusion, upon rigorous examination of the musical compositions of "Don Diablo" and "Levitating," the evidence lends considerable weight to the claim made by Linzer and Brown regarding copyright infringement. The foundation of Copyright Law is built upon the protection of original artistic expressions, and in this context, the similarities between the two songs are both profound and numerous.

Foremost, both songs feature their identical elements right from the musical 'incipit' or the opening sentence, setting a precedent for the listener from the outset. This is not a fleeting similarity; they contain a striking match of 20 consecutive notes characterized by matching pitches, identical intervals, and rhythm. This identical initial motive is not a one-time occurrence but is repeated thrice in both compositions, reinforcing its prominence and importance.

The depth of the songs' similarity doesn't stop there. Over a span of four bars, there's a sequence of 45 notes that align in rhythmic values, adding another layer to the case of infringement. Furthermore, between bars 10 to 13, both songs share two precise musical sentences, which suggests more than just a mere coincidence.

Beyond the notes and sentences, the very essence of how the lyrics are set to music is remarkably similar. Both compositions utilize an articulated syllable-to-note approach, emphasizing each word with distinct musical notes. This approach, combined with a similar background beat and rhythm, creates a nearly indistinguishable auditory experience for the listener. Lastly, even if one were to move beyond the technicalities, there's an undeniable resemblance in the overall feel of the songs, characterized by a fast, articulated tempo that is hard to overlook. Given all these compelling points, it is evident that Linzer and Brown's claim of copyright infringement is not just plausible but strongly supported by the intricate musical comparisons, making the case for copyright infringement hard to dispute.

Truly yours,

*Barbara Salani*

# Barbara Salani

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## EDUCATION

<b>Florida Atlantic University</b>	<b>May 2024</b>
<i>Ph.D. in Comparative Studies, Musicology and Italian Studies (CLL)</i>	Boca Raton, FL
<b>Florida Atlantic University</b>	<b>May 2020</b>
<i>Master of Music in Piano Performance</i>	Boca Raton, FL
<b>Italian Conservatory</b>	<b>May 1987</b>
<i>Diploma in Piano Performance</i>	Rome, IT
<b>Philadelphia University of the Arts</b>	<b>May 1985</b>
<i>Bachelor of Music in Piano Performance, Magna Cum Laude</i>	Philadelphia, PA
<b>Escuela de Música Juan Manuel Olivares</b>	<b>May 1981</b>
<i>Diploma as Piano Professor</i>	Caracas, VZ

## WORK EXPERIENCE

<b>Florida Atlantic University</b>	
<i>Adjunct Professor: Teaching for 'Owlingua' Continuing Education Language Program</i>	<b>2021-Present</b>

- Commissioned by The Consulate General of Italy in Miami, Ms. Salani composed “Dante’s Anthem” based on Dante’s Sonnet “Tanto Gentile e Tanto Onesta Pare”, to symbolize unity among students of Italian Language worldwide. Multiple schools and universities across three Italian Consular Districts in Miami, Chicago, and New York, participated to this teaching program. **2021**
- Initiated and developed the YouTube Playlist titled “Teaching Dante’s Anthem” **2020-2021**
- Concerto per Dr. Myriam Swennen Ruthenberg founder of the Italian Program at FAU **April 2021**
- Directed the teaching project “Music Module” for the Italian Program at FAU, holding roles as Instructor, Artistic Director, and Choral Conductor for *the XX Week of the Italian Language in the World* dedicated to graffiti, illustrations, and comics. **2020**

<b>FAU Graduate Teaching Assistant and Collaborative Pianist</b>	<b>2018-2020</b>
Partnered with a diverse range of singers, instrumentalists, and FAU Orchestra, providing impeccable accompaniment services.	
Conceptualized and executed a musical teaching project in collaboration with The Italian General Consulate in Miami, Ente Gestore ODLI, Il Circolo, and The Italian Cultural Society. The initiative, backed by Gamma Kappa Alpha, FAU Italian Honor Society, culminated in a grand concert, bringing together nearly 300 Italian language students from diverse educational institutions, from the Elementary to the University. <b>2018-2019</b>	

<b>Salani Academy</b>	<b>1987 – Present</b>
<i>Private Piano and Music Instructor</i>	Salani Studio

- Designed tailored music lessons based on individual student requirements, such as exams or competitions, consistently achieving notable performance results from students.
- Earned multiple teaching accolades from institutions across Europe and the USA for consistent excellence in the field.
- Students have won national and international competitions and have performed at prestigious venues, including Carnegie Hall in New York.

<b>Conservatorio Italiano</b>	<b>1980-1981</b>
<i>Lead Piano Instructor</i>	Caracas, VZ
Provided expert instruction and guidance to build pianists, fostering a culture of excellence and passion for the art.	

## PERFORMANCES

- **Featured soloist with Orchestras** 1984-Present
- Featured soloist with the Symphony of the Americas 2014-Present
- Soloist with *Orquesta Sinfónica de Maracaibo*, 1986-1988
- Soloist with The New England Orchestra, 1985
- Soloist with The *Orquesta Filarmónica de Caracas* 1984
- Guest artist for several radio and television broadcasts.
- Performed in more than 100 concerts in Venezuela, the United States, Italy, Spain, France and Greece.
- Piano Duo with Argentinian Pianist Laura Helman performed in Italy and other parts of Europe. 1990-Present
- Piano Duo with Sergio Salani performed in the USA, Venezuela, Italy and other parts of Europe. 1980-Present

## LECTURES

- **Lectures and Presentations in National and International Conventions** 2017-Present
- Lecture in Sarzana for InCanto Armonico Festival June-2023
- Florida Atlantic University CSSA "Social Justice" Conference March-2023
- Lectures in Lucca, and Catania, Italy for AATI (American Association Teachers of Italian) 2022-2023
- Presentations at the Cartiglione del Terziere Castle in Lunigiana, Tuscany 2022-2023
- Presentation at the Maria Caniglia Theatre in Sulmona July-2022
- La Spezia 'Giacomo Puccini' Conservatory 2022-2023
- Author of the book *Music for Life, The Salani Brothers*, written, self-published and translated by the author in 3 languages. 2017-Present
- Symphony of the Americas: Pre-Concert lectures. 2015-Present

## JUDGING DURING EXAMS OR COMPETITIONS

- Judge for Music Teachers Association's Student Day, 2016-Present
- Judge Musicale 2016-Present
- Scholarship Competition, FL, USA 2016-Present

## LEADERSHIP

- President of *Gamma Kappa Alpha Italian Honor Society* 2019-Present
- Vice President of the *Palm Beach County Music Teachers Association* 2022-Present
- Member of the Board of Directors of the Symphony of the Americas 2019-2021
- Coordinator of the *Musicfor* Team, an International Association, music education in disadvantaged areas of the World 2015-Present
- Conductor, pianist, music and choir instructor at the *Boys & Girls Club Choir* 2015-2017
- Music director, band and orchestra conductor and arranger at the *Don Bosco Church in Viareggio, Italy*. 2009-2015

## MUSIC ACCOMPLISHMENTS

- Third Prize awarded to Duo Laura Helman-Barbara Salani at the "Moncalieri International Competition", Italy. 1991
- Honorable Mention at the " International Piano Recording Competition" in Austin, Texas, USA. 1987
- "Who's Who among students in American Universities and Colleges" 1985
- "Dean's List Award of Merit", Philadelphia University of the Arts 1985

## MUSIC ARRANGEMENTS

- Arrangements for the Symphony of the Americas, Fort Lauderdale, FL. 2015-2018
- Proficient in music arrangements and transcriptions 2016-2018
- For soloists, chorus and orchestra

### **ADDITIONAL SKILLS**

- Trilingual: fluent in English, Italian and Spanish
- Training: Sibelius, Microsoft Word, PowerPoint, Excel, Outlook

### **AWARDS AS AN AUTHOR**

The book - *Music for Life, The Salani Brothers* was awarded in Literary Competitions in Italy:

• “ <i>Massa, Città Fiabesca di Mare e di Marmo</i> ”, First Prize	<b>September 2018</b>
• “ <i>Michelangelo Buonarroti International Competition</i> ”, Honorable Mention	<b>November 2018</b>
• “ <i>Premio Letterario Residenze Gregoriane 2018</i> ” International Prize, Honorable Mention	<b>January 2019</b>
• Best Biography Book Awarded by <i>The Akademia Literature Awards</i>	<b>September 2019</b>
• “ <i>International Literary Award Le Grazie Portovenere -La Baia dell’Arte</i> ”	<b>October 2020</b>